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EXAMINER
CHRISTENSEN, SCOTT B

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2444	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/675,654	KARAOGUZ ET AL.	
	Examiner	Art Unit	
	Scott Christensen	2444	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *15 October 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-42* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This Office Action is in regards to the most recent papers filed on 10/15/2008.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 7-14, 17-24, and 27-42 are rejected under 35 U.S.C. 102(b) as being anticipated by "The Gnutella Protocol Specification v0.4", on June 3, 2001, hereafter referred to as "Gnutella."

With regard to claim 1, Gnutella discloses a method for communicating information in a distributed media network, the method comprising:

automatically detecting, without user intervention, whether one or more of new media, data and/or service within the distributed network is available (Gnutella: Page 1, "Query". The "Query" descriptor is used for finding media that is available on the network. Further, the actual act of detecting is performed automatically. Even if the user initiates the act of detecting with a query, the act itself is performed automatically and without user intervention.);

migrating said newly available one or more of new media, data and/or service to at least a first media processing system with the distributed media network (Gnutella: Page 1, "Push". "migrating" is interpreted as being equivalent to transfer (See

specification paragraph [0011], where transfer and migrate seem to be interchangeable).); and

storing said migrated newly available one or more of new media, data and/or service at said least a first media processing system (Gnutella: Page 7. The file is downloaded, which means that the file is stored at the destination.).

Gnutella does not disclose expressly detecting whether the one or more of new media, data, and/or service becomes newly available.

However, a person of ordinary skill in the art would have known how to perform this functionality.

Thus, it would have been obvious to detect whether the one or more of new media, data, and/or service becomes newly available.

The suggestion/motivation for doing so would have been that a user making multiple queries would perform this function. If the first query does not return a hit, the user may make a second query after the first query returned no hits. A user who wishes to find specific data (e.g. a specific media file) may make several requests for the media file in cases where the first request did not return any results. A second request would possibly return results, as the user would recognize that Gnutella only returns results if a user currently logged in has the file at the time of the query. As users are downloading files, logging on, and logging off, when the first query was made, no one currently on the network may have had the file, but at a later time, the file may become newly available, as a user on the network just obtained and shared the file, or a user with the file just logged onto the network. Thus, having a user perform a second query

after a first query fails to return results allows the user to find media files that have become newly available, allowing the user to acquire the desired file.

With regard to claim 2, Gnutella discloses the invention as substantially claimed except determining whether said stored migrated newly available one or more of new media, data and/or service should be processed.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

The Applicant is entitled to traverse any/all Official Notice taken in this action according to MPEP §2144.03. However, MPEP §2144.03 further states “See also In re Boon, 439 F.2d 724, 169 USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain adequate information or argument to create on its face a reasonable doubt regarding the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ 231, 234 states "as we held in Alhert, an applicant must be given the opportunity to challenge either the correctness of the fact asserted or the notoriety or repute of the reference cited in support of this assertion. We did not mean to imply by this statement that a bald challenge, with nothing more, would be all that was needed.” Further note that 37 CFR §1.67(c)(3) states "Judicial notice means official notice." Thus, a traversal by the Applicant that is merely "a bald challenge, with nothing more" will be given very little weight.

It would have been obvious to determine whether said stored migrated newly available one or more of new media, data and/or service should be processed.

The suggestion/motivation for doing so would have been that when a file is downloaded, the user should be able to decide whether the file will be processed or not. For example, if a user downloads a song, the user should be able to then determine if the song will actually be played (which would be processing the song's file) or just stored. This allows a user who is downloading many files or downloading larger files to determine when the file will actually be processed, and further allows security software operations (i.e. virus scan) to be performed on the file prior to processing the file.

With regard to claim 3, Gnutella teaches the invention as substantially claimed except if said stored migrated newly available one or more of new media, data and/or service is to be processed, migrating said stored migrated newly available one or more of new media, data and/or service into one or more of a media view and channel view.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to migrate said stored migrated newly available one or more of new media, data and/or service into one or more of a media view and channel view if said stored migrated newly available one or more of new media, data and/or service is to be processed.

The suggestion/motivation for doing so is that the media view and channel view are both interpreted as being user interfaces for controlling output of the media file. For example, if a song file is downloaded, the user interface that would be displayed to the user for play, pause, fast forward, etc. operations would be the media view. There exist

many programs for doing this (e.g. Windows Media Player, Quicktime Player, Real Player, Winamp), and these programs allow a user to control the media presentation, and for many systems, these programs are required to access the media files (for example, to play an mp3 file, the system requires an mp3 decoder, which is not necessarily integrated into the system, meaning a user must use a program that constitutes a media view to access these files).

With regard to claim 4, Gnutella teaches that one or more of a media view and a channel view is associated with said first media processing system (As the media view is a program on the first system (as per the rejection of claim 3), the media view is associated with the first media processing system.).

With regard to claim 7, Gnutella discloses automatically migrating said newly available one or more of new media, data and/or service to at least a first media processing system within the distributed media network (Gnutella: Pages 8-9. When a specific file is requested, it is automatically downloaded (migrated) to the requesting node).

With regard to claim 8, Gnutella discloses the invention as substantially claimed except scheduling said migration of said newly available one or more of new media, data and/or service to one or more of said first media processing system and a second media processing system within the distributed media network.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to schedule migration of said newly available one or more of new media, data and/or service to one or more of said first media processing system and a second media processing system within the distributed media network.

The suggestion/motivation for doing so would have been that the claim, as currently presented, does not require any specific requirements with how the scheduling is performed or that the scheduling is for a future date and time. A file is scheduled to be downloaded in an instance where the download is requested. Further, queues are very well known in the art, and allow a user to select more files for downloading than can concurrently be downloaded, where the queue starts downloading as many files at the same time as the system is capable of, and automatically downloads subsequent files as previous downloads stop (e.g. download is complete or interrupted). The queue itself is a kind of schedule.

With regard to claim 9, Gnutella teaches indicating said migration of said newly available one or more of new media, data and/or service to one or more of said first media processing system and a second media processing system within the distributed media network (Gnutella: Page 8, Paragraphs 4-5. The file is indicated as being downloaded when the system determines that the number of bytes that the file is has been downloaded. Further, the system recognizes if a download was interrupted,

meaning the system has a knowledge of when downloads are completed, the knowledge constituting an indication.).

With regard to claim 10, Gnutella discloses the invention as substantially claimed except archiving said stored newly available one or more of new media, data and/or service.

However, Official Notice (See MPEP §2144.03) is taken that this functionality is very well known in the art.

It would have been obvious to archive the stored newly available one or more of new media, data and/or service.

The suggestion/motivation for doing so would have been that archiving is interpreted as being storing the media in a non-temporary fashion. For example, storing the media on a system's hard disk after downloading the media constitutes archiving. Therefore, if a user wishes to have the file after the turning off the system, the user must store the file on some sort of non-volatile memory (e.g. the hard disk), the storing of which on a non-volatile memory being equivalent to archiving. It is further noted that other forms of archival (i.e. backing up) are well known in the art, where all of the data from a user's system would be archived to another system for storage and/or recovery reasons.

With regard to claims 11-14 and 16-20, the instant claims are substantially similar to claims 1-4 and 6-10, and are rejected for substantially similar reasons.

With regard to claims 21-24 and 26-30, the instant claims are substantially similar to claims 1-4 and 6-10, and are rejected for substantially similar reasons.

With regard to claim 31, Gnutella discloses that said one or more processor is one or more of a computer processor, media peripheral processor, media exchange system processor, media processing system processor and a storage processor.

With regard to claims 32-35 and 38-42, the instant claims appear to be substantially similar to claims 1-4 and 7-14, and are rejected for substantially similar reasons.

Claim Rejections - 35 USC § 103

4. Claims 5-6, 15-16, and 25-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gnutella in view of US Patent Application Publication US 2002/0194309 to Carter et al., hereafter referred to as "Carter."

With regard to claim 5, Gnutella teaches the invention as substantially claimed except determining whether to push said migrated newly available one or more of new media, data and/or service to at least on of a second media processing system and a personal computer coupled to the media exchange network.

However, Carter discloses a system for synchronizing media presentations from a first system to a second system (Carter: Paragraph [0043]). The system determines whether to copy files from the first system to the second system (Carter: Figure 4, 404).

It would have been obvious to combine the synchronization of media systems, as in Carter, with the method of Gnutella.

The suggestion/motivation for doing so would have been that the system of Carter allows a user to synchronize a second media system with the media presentations on a first media system (e.g. the user's home computer). Thus, the files downloaded using Gnutella can be transferred to the second device so that the user may enjoy the media presentations in other environments besides the home computer (for example, the user's car).

With regard to claim 6, Gnutella as modified by Carter if said migrated newly available one or more new media, data and/or service is to be pushed, migrating said one or more of newly available media, data and/or service to said one or more of said second media processing system and a personal computer coupled to the media exchange network (Carter: Figure 4, 430. When the system of Carter is utilized with that of Gnutella, media files would be transferred (migrated) from the first location to the second location. The mobile media server can be considered to be a media processing system.).

With regard to claims 15-16, the instant claims are substantially similar to claims 5-6, and are rejected for substantially similar reasons.

With regard to claims 25-26, the instant claims are substantially similar to claims 5-6, and are rejected for substantially similar reasons.

With regard to claims 36-37, the instant claims are substantially similar to claims 5-6, and are rejected for substantially similar reasons.

Response to Arguments

5. Applicant's arguments filed 10/15/2008 have been fully considered but they are not persuasive.

On pages 17-19, Applicant argues that Gnutella cannot disclose or suggest "automatically detecting, without user intervention, whether one or more of new media, data and/or service becomes newly available within the distributed network." However, as addressed above, the user simply initiates the process, but the actually detecting is performed automatically and without user intervention. Accordingly, the rejections of claims 1, 11, and 21 have been maintained even in light of Applicant's amendments and arguments.

On pages 20-23, Applicant attempts to traverse the taking of Official Notice with respect to claims 2, 3, 8, and 10.

Applicants broadly state, "the Applicants respectfully submit that the subject matter of the perceived and explicit assertions of Official Notice is not well-known in the art as evidenced by the searched and cited prior art. The Applicant submits that the Examiner has performed "a thorough search of the prior art," as part of the Examiner's obligation in examining the present application under MPEP § 904.02. Additionally, the Applicants respectfully submit that the Examiner's searched and cited references found during the Examiner's thorough and detailed search of the prior art are indicative of the knowledge commonly held in the art. However, in the Examiner's thorough and detailed search of the relevant prior art, none of the prior art taught or suggested the subject matter of the perceived and explicit assertions of Official Notice." However, this statement is irrelevant to a taking of Official Notice. As Applicant indicates, the Official Notice should be of "notorious character" and "capable of instant and unquestionable demonstration as being well-known," as stated in MPEP 2144.03.

According to MPEP 2144.03 C, to adequately traverse a finding of Official Notice, "an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the fact is not considered to be common knowledge or well-known in the art." Applicant has not addressed the taking of Official Notice directly, or the logic presented with respect to the Official Notice. Further, according to MPEP 2144.03 C, "the examiner must provide documentary evidence in the next Office Action if the rejection is to be maintained" only if applicant adequately traverses the examiner's

assertion of Official Notice. As Applicant has not adequately traversed the taking of Official Notice, the taking is maintained. Applicant should review MPEP 2144.03 C before attempting to traverse any finding of Official Notice.

Thus, after careful consideration of Applicant's arguments, the rejections of the instant claims under 35 USC 103 have been maintained.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Christensen whose telephone number is (571)270-1144. The examiner can normally be reached on Monday through Thursday 6:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on (571) 272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. C./
Examiner, Art Unit 2444

/William C. Vaughn, Jr./
Supervisory Patent Examiner, Art Unit 2444